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AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1988

Introduced by Assembly Member Davis

February 23, 2012

An act to add Chapter 7.5 (commencing with Section 52190) to Part 28 of Division 4 of Title 2 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 1988, as amended, Davis. Pupils: English learners.

(1) Existing law, which is inoperative, defines “pupils of limited English proficiency” as those who do not have the clearly developed English language skills of comprehension, speaking, reading, and writing necessary to receive instruction only in English at a level substantially equivalent to pupils of the same age or grade whose primary language is English. Existing law requires each school district that has one or more pupils who are English learners and, to the extent required by federal law, each county office of education and each charter school, to assess the English language development of each of those pupils upon initial enrollment in order to determine the level of proficiency of those pupils, and thereafter to assess each of those pupils annually until the pupil is redesignated as English proficient.

The inoperative Chacon-Moscone Bilingual-Bicultural Education Act of 1976 contains provisions regarding the identification criteria and allocation formulas that existing law requires to be used for funding purposes. One of the inoperative provisions requires a school district to ascertain the total number of pupils of limited English proficiency

within the district and classify them according to their primary language, age, and grade level. This count is known as the “census of pupils of limited English—~~proficiency~~” *proficiency*,” and consists of a determination of the primary language of each pupil enrolled in the school district and an assessment of the language skills of all pupils whose primary language is other than English. Another of the inoperative provisions requires a school district to report annually to the State Department of Education certain information regarding English learners.

This bill would define ~~“pupils of limited English proficiency”~~ *“standard English learners”* as pupils ~~who speak English as their primary language, have limited proficiency in standard English, of limited English proficiency whose primary language is English and who~~ come from home environments where the absence of standard English or academic English spoken by their parents or primary caregivers has a significant impact on their level of English language proficiency. The bill would require a school district to complete a “census of pupils of limited standard English proficiency” that would consist in part of a determination of the ~~language~~ *standard English* proficiency of these pupils and ~~a diagnostic~~ *an* assessment of their *English* language skills. The bill would require the results of this census to be reported to the State Department of Education, which would report this information to the State Board of Education along with the specialized learning programs in which those pupils are enrolled. The bill would require a school district to establish ~~reclassification criteria to determine when these pupils have developed the language skills necessary to succeed in regular classroom instruction~~ *the length of instructional time for mainstream English language development*. The requirements regarding the census, assessments, and ~~reclassification criteria~~ *length of instructional time for mainstream English language development* would impose a state-mandated local program on school districts.

The bill would require the Superintendent of Public Instruction to review ~~all existing assessment tests of English language development tests that assess the academic English language development of pupils~~ and to determine if any meet specified requirements. If no suitable test exists, the bill would authorize the Superintendent, with approval of the state board, to contract to modify an existing test to meet the specified requirements. The bill would require the test to be used to identify pupils *whose primary or home language is English and who*

are limited English proficient, ~~to determine their level of English proficiency~~, and to assess their progress in acquiring the skills of listening, reading, speaking, and writing ~~standard~~ *academic* English.

The bill would authorize the governing board of a school district to consider the use of any *standards-based, culturally and linguistically responsive* structured English language development instructional materials in reading, writing, speaking, and ~~comprehension~~ *listening* if the district documents the lack of available and appropriate materials, personnel, and training programs to address, at every grade level, the needs of all standard English learners. The bill would require the department to maintain a list of available English language development curriculum materials to ensure that school districts are provided with as many high-quality standards-aligned instructional material options as possible. The bill would authorize a school district to request an instructional materials waiver, and would require the waiver request to be signed by the chairperson of the English language arts committee of the school district.

The bill would authorize the department to use specified funds to implement this act.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to accomplish
- 2 all of the following:
- 3 (a) Shine a spotlight on the achievement gap and allow for
- 4 schools and school districts to provide locally tailored solutions
- 5 ~~to the problems causing the achievement gap that accelerate~~
- 6 *learning for standard English learners while increasing academic*
- 7 *achievement for all pupils.*
- 8 (b) Provide a high-quality English language ~~diagnostic~~
- 9 *development assessment for standard English learners* that is

1 aligned to the California common core state standards and to
2 support the development and use of high-quality assessments that
3 are aligned with college- and career-ready standards to better
4 determine whether pupils have acquired the *academic* skills they
5 need for success. The diagnostic assessment system will better
6 capture skills, provide more accurate measures of pupil growth,
7 and better inform classroom instruction to respond to academic
8 needs.

9 (c) Provide for an initial assessment of standard English
10 language development to help identify pupils as standard English
11 learners who need to develop their *skills in the following domains*
12 *of English language development*: listening, speaking, reading,
13 and writing ~~skills~~.

14 (d) Provide for an annual *standard English language*
15 *development* assessment to be given to pupils who are *classified*
16 *as English only but* identified as standard English learners to see
17 how well they are developing their listening, speaking, reading,
18 and writing skills in English. The results of the annual *standard*
19 *English language development* assessment will be used, along with
20 other information, to help monitor each pupil's progress toward
21 *language* proficiency in standard English.

22 (e) Provide flexibility by supporting state and local innovation
23 aimed at increasing the quality of instruction and improving pupil
24 achievement and the opportunity to innovate and develop locally
25 tailored solutions to the unique ~~educational~~ *cultural and linguistic*
26 challenges of every school district, school, and pupil.

27 (f) Provide schools with ~~large~~ achievement gaps the ability to
28 adopt research-based, *culturally responsive* interventions to close
29 the gap while increasing overall pupil achievement, ensuring the
30 success of all pupils, especially those who are farthest behind.

31 SEC. 2. (a) The Legislature recognizes that existing curricular
32 tools may not be sufficient or are inadequate in promoting the
33 academic success of standard English learners and that this
34 population of pupils needs more *direct instruction or* explicit
35 support to address the ~~academic deficits~~ *challenges* that often
36 emerge as a result of their *home language barriers differences*.

37 (b) The Legislature recognizes that for English language arts
38 there may be a shortage of structured *mainstream* English language
39 development textbooks, curriculum, and *culturally responsive*

1 teacher training programs *to meet the academic needs of standard*
2 *English learners.*

3 (c) The Legislature recognizes that educators need *specific*
4 *training to build* more capacity to ~~collaborate and~~ adjust instruction
5 to meet the needs of ~~pupils~~ *standard English learners.*

6 (d) Therefore, it is the intent of the Legislature to ~~allow school~~
7 ~~districts to request a waiver regarding the use of instructional~~
8 ~~materials for limited-English-proficient pupils whose primary~~
9 ~~language is English~~ *provide curriculum flexibility to school*
10 *districts.*

11 SEC. 3. Chapter 7.5 (commencing with Section 52190) is added
12 to Part 28 of Division 4 of Title 2 of the Education Code, to read:

13
14 CHAPTER 7.5. LIMITED-ENGLISH-PROFICIENT PUPILS WHOSE
15 PRIMARY LANGUAGE IS ENGLISH
16

17 52190. Unless the context otherwise requires, the definitions
18 set forth in this section shall govern the construction of this chapter.

19 (a) “Basic skills” means mathematics and language arts,
20 including, but not limited to, reading ~~and~~, writing, *speaking, and*
21 *listening.*

22 (b) “Content standards” or “*California common core standards*”
23 means the specific academic knowledge, skills, and abilities that
24 all public schools in this state are expected to teach and all pupils
25 are expected to learn in each of the core curriculum areas, at each
26 grade level tested.

27 (c) “Curriculum” means an outline of the components of a given
28 course of study designed to provide state direction to school
29 districts in the provision of instructional programs.

30 (d) ~~“Diagnostic—~~“*Standard English language development*
31 *assessment*” means assessments of the current level of proficiency
32 of a pupil that serves both of the following purposes:

33 (1) The identification of particular academic standards or skills
34 a pupil has or has not yet achieved.

35 (2) The identification of possible reasons that a pupil has not
36 yet achieved particular academic standards or skills.

37 (e) “District board” means the governing board of a school
38 district.

39 (f) “Instructional materials” means all materials that are designed
40 for use by pupils and their teachers as a ~~principle~~ *principal* learning

1 resource and to help pupils to acquire facts, skills, or opinions or
2 to develop cognitive processes. Instructional materials may be
3 printed or nonprinted, and may include textbooks,
4 technology-based materials, other educational materials, and tests.

5 (g) “Primary *or* home language” is the language the pupil first
6 learned or the language that is spoken in the pupil’s home.

7 (h) ~~“Pupils of limited English proficiency” are pupils who speak~~
8 ~~English as their primary language, have limited proficiency in~~
9 ~~standard English, and~~ “Standard English learners” means pupils
10 of limited English proficiency whose primary language is English
11 but reflects a unique cultural and linguistic history. Though their
12 native historical language is not English and they are classified
13 as English only, these pupils enter school with limited academic
14 or standard English proficiency. They come from home
15 environments where the absence of standard English or academic
16 English spoken by their parents or primary caregivers has a
17 significant impact on their level of English language proficiency.
18 ~~The~~ Their challenge in speaking, reading, writing, or
19 ~~comprehending the understanding standard~~ English language
20 structure may deny these individuals the ability to meet California’s
21 proficient level of achievement on annual ~~primary language~~
22 ~~proficiency assessments content standards tests~~. The determination
23 of which pupils are pupils of limited *academic* English proficiency
24 shall be made in accordance with the procedures specified in
25 Section 52196.

26 52191. (a) Each school district shall ascertain not later than
27 the first day of March of each year the total number of pupils of
28 limited *standard* English proficiency, *whose primary language is*
29 *English*, as defined in Section 52190, within the district, and shall
30 classify them according to their primary language, age, and grade
31 level. This count shall be known as the “census of pupils of limited
32 ~~standard English proficiency~~ *proficiency*,” and shall consist of a
33 determination of the standard English proficiency of each pupil
34 enrolled in the school district and ~~a diagnostic~~ *an* assessment of
35 the English language skills of all pupils whose primary language
36 is English.

37 (b) The census shall be taken by individual, actual count, and
38 not by estimates or samplings. All pupils of limited *standard*
39 English proficiency and special education pupils shall be counted.
40 Special language assessment instruments, designated by the

1 Superintendent and in compliance with the requirements of
2 subdivision (j) of Section 56001, may be used for special education
3 pupils *who are standard English learners*. The results of this census
4 shall be reported to the department not later than April 30 of each
5 year. The previous census shall be updated to include new enrollees
6 and to eliminate pupils who are no longer pupils of limited English
7 proficiency and pupils who no longer attend school in the district,
8 and shall be reported pursuant to Section 52192.

9 52192. The Superintendent, with the approval of the state board,
10 shall prescribe census-taking methods, applicable to all school
11 districts in the state, which shall include, but need not be limited
12 to, the following:

13 (a) ~~A~~ *An initial assessment or* determination of the primary *or*
14 *home* language of each pupil enrolled in the school district. The
15 primary *or home* language of new pupils shall be determined as
16 they enroll. Once determined, the primary *or home* language need
17 not be redetermined unless the parent or guardian claims there is
18 an error. Home language determinations are required only once,
19 unless the results are disputed by a parent or guardian.

20 (b) An *annual* assessment of the ~~language skills level of~~
21 *academic English language development* of all pupils whose
22 primary language is English. The speaking, reading, writing, and
23 comprehension of the English language structure shall be assessed,
24 except that reading and writing skills need not be assessed for
25 pupils in kindergarten and grades 1 and 2. For those pupils who,
26 on the basis of oral language proficiency alone, are clearly limited
27 English proficient, assessment of reading and writing skills shall
28 be necessary only to the extent required by subdivision (c). This
29 assessment, which shall be made as pupils enroll in the district,
30 shall determine the level of *academic English* proficiency for each
31 pupil.

32 (c) ~~(1) A diagnostic assessment in English measuring speaking,~~
33 ~~comprehension, reading, and writing shall be administered for~~
34 ~~instructional use at the district level. This diagnostic assessment~~
35 ~~shall be updated as necessary to provide the needs of each pupil~~
36 ~~of limited English proficiency.~~

37 ~~(2)~~

38 (c) ~~(1)~~ The ~~diagnostic initial~~ assessment process shall be
39 completed within 90 days after the date of the pupil's initial

1 enrollment, and shall be performed in accordance with rules and
2 regulations adopted by the state board.

3 ~~(3)~~

4 ~~(2) The parent or guardian of the pupil shall be notified of the~~
5 ~~results of the assessment.~~ The department shall conduct an
6 equivalency study of all language proficiency tests designated for
7 the identification of pupils of limited English proficiency to ensure
8 uniformity of language classifications and to ensure the reliability
9 and validity of the tests. Tests, materials, and procedures to
10 determine proficiency shall be selected to meet psychometric
11 standards and administered so as not to be racially, culturally, or
12 sexually discriminatory.

13 ~~(4)~~

14 (3) The department shall annually evaluate the adequacy of,
15 and designate, the instruments to be used by school districts, and
16 these instruments shall be available by March 15 of each year.

17 ~~(5)~~

18 (4) The assessments shall be conducted by persons who are
19 adequately trained and prepared to evaluate cultural and ethnic
20 factors, and who shall follow procedures formulated by the
21 Superintendent to determine which pupils are pupils of limited
22 *standard* English proficiency, as defined in Section 52190. A
23 school district may require that the assessment be conducted by
24 persons who hold a valid, regular California teaching credential
25 and who meet the other qualifications specified in this paragraph.

26 52193. The department shall review the results of the census
27 each year. If the information provided by a school district appears
28 to be inaccurate or if parents, teachers, or counselors file a formal
29 written complaint that the census is inaccurate, the department
30 shall audit the district's census. If the department concludes that
31 the census was incorrectly taken, or the results appear to be
32 inaccurate, the department shall require another census to be taken
33 and the corrected information to be provided.

34 52194. Pertinent information from the *initial* assessment of
35 ~~primary or home language skills and annual assessment of the~~
36 ~~level of academic English development~~ for each pupil whose
37 primary language is English shall be retained by the school district
38 as long as the pupil is enrolled in the district. Each school district
39 shall report annually to the department, and the department shall
40 report to the state board, the following data:

1 (a) The number of pupils whose primary *or home* language is
2 English.

3 (b) The number of pupils who are of limited English proficiency.

4 (c) The number of pupils whose primary language is English
5 and who are enrolled in classes, including, but not limited to,
6 specialized learning programs similar to English language
7 mainstream.

8 (d) The number of pupils who have met the language
9 reclassification criteria for exit criteria pursuant to Section 52195.

10 52195. (a) ~~Reclassification criteria~~ *The length of instructional*
11 *time for mainstream English language development* shall be
12 established by each school district in which pupils of limited
13 English proficiency are enrolled. ~~The criteria shall determine when~~
14 ~~pupils of limited English proficiency have developed the language~~
15 ~~skills necessary to succeed in regular classroom instruction. The~~
16 ~~reclassification process, at a minimum, shall utilize multiple~~
17 ~~criteria, including, but not limited to, all of the following:~~

18 (1) ~~Teacher evaluation, including a review of the pupil's~~
19 ~~curriculum mastery.~~

20 (2) ~~Objective assessment of language proficiency and reading~~
21 ~~and writing skills.~~

22 (3) ~~Parental opinion and consultation.~~

23 (4) ~~An empirically established range of performance in basic~~
24 ~~skills based on nonminority English proficient pupils of the same~~
25 ~~grade and age, which demonstrates that the pupil is sufficiently~~
26 ~~proficient in English to succeed in a regular instructional setting.~~

27 (b) The state board shall adopt regulations setting forth standards
28 for language reclassification criteria *mainstream English language*
29 *development* to be adopted by school districts. The state board's
30 regulations, at a minimum, shall prescribe a ~~reclassification~~ *an*
31 *assessment* process that utilizes multiple criteria as required by
32 this section.

33 (c) In following the state board's regulations, each school district
34 shall establish criteria for determining when pupils of limited
35 English proficiency ~~enrolled in programs designed to address their~~
36 ~~specific language needs~~ have developed the *academic* English
37 language skills of ~~comprehension~~ *listening*, speaking, reading, and
38 writing necessary to succeed in a regular instructional setting.

39 52196. (a) (1) The Superintendent shall review *all* existing
40 tests that assess the *academic* English language development of

1 pupils ~~whose primary language is English~~. The tests shall include,
2 but not be limited to, an assessment of ~~achievement~~ *the English*
3 *language proficiency* of these pupils in ~~English~~ reading, *writing*,
4 speaking, and ~~written skills~~ *listening*. The Superintendent shall
5 determine which tests, if any, meet the requirements of subdivisions
6 (b) and (c). If any existing test or series of tests meet these criteria,
7 the Superintendent, with approval of the state board, shall report
8 to the Legislature on its findings and recommendations.

9 (2) If no suitable test exists, the Superintendent shall explore
10 the option of a collaborative effort with other states to develop a
11 test or series of tests and share test development costs. If no suitable
12 test exists, the Superintendent, with approval of the state board,
13 may contract to develop a test or series of tests that meet the criteria
14 of subdivisions (b) and (c) or may contract to modify an existing
15 test or series of tests so that it will meet the requirements of
16 subdivisions (b) and (c).

17 (3) The Superintendent and the state board shall release a request
18 for proposals for the development of the test or series of tests
19 required by this subdivision. The state board shall select a
20 contractor or contractors for the development of the test or series
21 of tests required by this subdivision, to be available for
22 administration during the 2013–14 school year.

23 (4) The Superintendent shall apportion funds appropriated to
24 enable school districts to meet the requirements of subdivision (d).
25 The state board shall establish the amount of funding to be
26 apportioned per test administered, based on a review of the cost
27 per test.

28 (5) An adjustment to the amount of funding to be apportioned
29 per test is not valid without the approval of the Director of Finance.
30 A request for approval of an adjustment to the amount of funding
31 to be apportioned per test shall be submitted in writing to the
32 Director of Finance and the chairpersons of the fiscal committees
33 of both houses of the Legislature with accompanying material
34 justifying the proposed adjustment. The Director of Finance is
35 authorized to approve only those adjustments related to activities
36 required by statute. The Director of Finance shall approve or
37 disapprove the amount within 30 days of receipt of the request and
38 shall notify the chairpersons of the fiscal committees of both houses
39 of the Legislature of the decision.

(b) (1) The test or series of tests developed or acquired pursuant to subdivision (a) shall have sufficient range to assess pupils in grades 2 to 12, inclusive, in English listening, speaking, reading, and writing skills. Pupils in kindergarten and grade 1 shall be assessed in English listening and speaking, once an assessment is developed. The early ~~literacy~~ *language development* assessment shall be administered for a period of three years beginning after the initial administration of the assessment or until July 1, 2013, whichever occurs first. Six months after the results of the last administered assessment are collected, but no later than January 1, 2014, the department shall report to the Legislature on the administration of the kindergarten and grade 1 early ~~literacy~~ *language development* assessment results, as well as on the administrative process, in order to determine ~~whether reauthorization of the early literacy assessment is the~~ appropriate *length of instructional time for mainstream English language development*.

(2) In the development and administration of the assessment for pupils in kindergarten and grade 1, the department shall minimize any additional assessment time, to the extent possible. To the extent that it is technically possible, items that are used to assess listening and speaking shall be used to measure early ~~literacy~~ *language development* skills. The department shall ensure that the test and procedures for its administration are age and developmentally appropriate. Age and developmentally appropriate procedures for administration may include, but are not limited to, one-on-one administration, a small group setting, and orally responding or circling a response to a question.

(c) The test or series of tests shall meet all of the following requirements:

(1) Provide sufficient information about pupils at each grade level to determine levels of *English* proficiency ranging from no English proficiency to fluent English proficiency with at least two intermediate levels.

~~(2) Have psychometric properties of reliability and validity deemed adequate by~~ *Be deemed nonbiased and adequately reliable and valid by culturally responsive experts and technical experts.*

(3) Be capable of administration to pupils with English as a primary language.

(4) Be capable of administration by classroom teachers.

(5) Yield scores that allow comparison of the growth of a pupil over time, can be tied to readiness for various instructional options, and can be aggregated for use in the evaluation of program effectiveness.

(6) Not discriminate on the basis of race, ethnicity, or gender.

(7) Be aligned with California common core standards for English language arts adopted by the state board.

(8) Be age and developmentally appropriate for pupils.

(d) The test shall be used for the following purposes:

(1) To identify pupils *whose primary or home language is English and* who are limited English proficient.

~~(2) To determine the level of English language proficiency of pupils who are limited English proficient.~~

~~(3)~~

~~(2) To assess the progress of limited-English-proficient pupils~~ *standard English learners* in acquiring the skills of listening, reading, speaking, and writing in ~~standard~~ *academic* English.

(e) (1) A pupil in any of grades 3 to 12, inclusive, shall not be required to retake those portions of the test that measure English language skills for which he or she has previously tested as advanced within each appropriate grade span, as determined by the department in accordance with paragraph (8) of subdivision (c).

(2) Notwithstanding paragraph (1), a pupil in any of grades 10 to 12, inclusive, shall not be required to retake those portions of the test that measure English language skills for which he or she has previously tested as early advanced or advanced.

(3) This subdivision shall not be implemented unless and until the department receives written documentation from the United States Department of Education that implementation is permitted by federal law.

52197. A district board may consider the use of any *standards-based, culturally and linguistically responsive* structured English language development instructional materials in reading, writing, speaking, and ~~comprehension~~ *listening* if a district documents the lack of available and appropriate materials, personnel, and training programs to address, at every grade level, the needs of all standard-English learners. The department shall maintain a list of available English language development curriculum materials consistent with English language development

1 standards and teacher training programs to ensure that school
2 districts are provided with as many high-quality standards-aligned
3 instructional material options as possible, so that educators may
4 have many rigorous options in choosing the best materials that
5 meet the needs of all pupils, including ~~English-only pupils~~ *standard*
6 *English learners*, English learners, and pupils with disabilities,
7 and that ensure that their pupils are able to master the academic
8 content standards adopted by the state board pursuant to Section
9 60605.8. If necessary, an instructional materials waiver can be
10 requested. The waiver is renewable yearly. Each waiver request
11 shall be signed by the chairperson of the English language arts
12 committee of the school district.

13 52198. The department shall use federal carryover funds
14 received pursuant to Title I of the federal No Child Left Behind
15 Act of 2001 (20 U.S.C Sec. 6301 et seq.), and any other available
16 state and federal funds, to implement this chapter.

17 SEC. 4. If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.